

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

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| BILL #: | CS/CS/HB 947 | FINAL HOUSE FLOOR ACTION: | |
| SPONSOR(S): | Local & Federal Affairs Committee; Transportation & Highway Safety Subcommittee; Ray | 112 Y's | 5 N's |
| COMPANION BILLS: | CS/CS/SB 1070 | GOVERNOR'S ACTION: Pending | |

SUMMARY ANALYSIS

CS/CS/HB 947 passed the House on April 30 as CS/CS/SB 1070. The bill provides that fuel terminals are critical state infrastructure and that local governments may not amend land use regulations to make fuel terminals existing on July 1, 2014 a nonconforming use.

The bill creates s. 163.3206, F.S., addressing the authority of local government to amend a comprehensive plan, land use designation or regulation, or zoning to render as nonconforming the occupation and use of land by an existing, authorized fuel terminal.

The bill provides legislative intent, defines "fuel" and "fuel terminal," and prospectively limits the authority of local government to change its land use designations to render a permitted and allowed fuel terminal a nonconforming use after July 1, 2014. The bill requires that local governments allow the repairing or rebuilding of a fuel terminal to its preexisting capacity if damaged or destroyed due to natural disaster or other catastrophe. Local governments are expressly authorized to adopt, implement, modify, and enforce applicable federal and state requirements for fuel terminals, including local safety and building standards. Such an exercise of local authority may not conflict with federal or state safety and security requirements for fuel terminals.

The bill does not have a fiscal impact on state or local governments. The designated land use for a permitted and allowed fuel terminal under any comprehensive plan, land use map, zoning district, or land development regulation may not be changed to conflict with the fuel terminal's authorized use.

The bill provides the act shall take effect July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act (the Act),¹ also known as Florida's Growth Management Act, was adopted in 1985. The Act requires counties and municipalities to adopt local government comprehensive plans guiding future growth and development.² Comprehensive plans contain chapters or "elements" addressing topics including future land use, housing, transportation, conservation, and capital improvements, among others.³ The Act is administered by the state land planning agency, the Department of Economic Opportunity.⁴

Land Development Regulation

Within one year of adopting a local comprehensive plan, a county or municipality must promulgate land development regulations implementing the plan.⁵ Land is divided into districts while certain uses and developments are assigned to those distinct districts through the process of "zoning."⁶ Typical zoning classifications include "residential," "commercial," and "industrial." These classifications can include finer distinctions. For example, a district designated for residential use may be restricted to apartment buildings while another may only permit single family housing.

A "permitted use" within a particular zoning district is one authorized as a matter of right.⁷ A "conditional use" may only be utilized secondarily to a permitted use and a local government has some discretion as to its approval.⁸ A "special exception" is a departure from the general provisions of a zoning ordinance granted through the exercise of the local government's legislative authority.⁹ A "nonconforming use" or structure is one in which the use or structure was legally permitted prior to a change in the law but the change no longer permits the re-establishment of such structure or use.¹⁰

Fuel Terminals

The Internal Revenue Service (IRS) defines a "terminal" used for fuel as "a storage and distribution facility supplied by pipeline or vessel, and from which taxable fuel may be removed at a rack..."¹¹ According to the IRS, there are currently 42 active fuel terminals in Florida.¹² At least one fuel terminal facility is a nonconforming use.¹³

¹ See Ch. 163, part II, F.S.

² Section 163.3167, F.S.

³ Section 163.3177, F.S.

⁴ Section 163.3221, F.S.

⁵ Section 163.3202(1), F.S.

⁶ 7 Fla. Jur 2d Building, Zoning, and Land Controls s. 111 *Generally; "Zoning" and "Planning" Defined and Distinguished* (2014).

⁷ *BMS Enters. LLC v. City of Fort Lauderdale*, 929 So.2d 9, 10 (Fla. 4th DCA 2006).

⁸ *Id.*

⁹ 7 Fla. Jur 2d Building, Zoning, and Land Controls s. 242 *Special Exception or Permit Distinguished from Variance* (2014).

¹⁰ See, e.g., *JPM Inv. Group, Inc. v. Brevard County Bd. of County Commissioners*, 818 So. 2d 595 (Fla. 5th D.C.A. 2002), citing §62-1181, Brevard County Code.

¹¹ Internal Revenue Service, *Publication 510, Excise Taxes: Part One – Fuel Taxes and Fuel Tax Credits and Refunds*, available at <http://www.irs.gov/publications/p510/ch01.html> (last visited March 4, 2014).

¹² Internal Revenue Service, *Approved Terminals 2-28-14*, available at http://www.irs.gov/pub/irs-utl/tcn_db.pdf (last visited March 4, 2014).

¹³ Information provided by the Florida League of Cities. Due to incomplete information it is unknown if there are more fuel terminal facilities that are nonconforming uses. The one fuel terminal known to be a nonconforming use is a facility in the City of Cape Canaveral.

Tampa is home to 11 fuel terminals¹⁴ and the Port of Tampa receives approximately 500 petroleum ships and unloads 2.4 billion gallons a year.¹⁵ Approximately 12.5 million gallons of fuel are delivered daily through Port Everglades to thirteen terminal and pipeline operators,¹⁶ over half of which is gasoline.¹⁷

Effect of Proposed Changes

Legislative Intent

The bill creates s. 163.3206, F.S., and declares the intent of the Legislature to maintain, encourage, and ensure adequate and reliable fuel terminal infrastructure in Florida. The bill states fuel terminals are essential to ensure efficient, reliable transportation and delivery of an adequate quantity of fuel throughout the state. Further, the ability to receive, store, and distribute fuel is essential to the state's economy and to the health, safety, welfare, and quality of life of residents and visitors.

Definitions

"Fuel" is defined to include any of the following:

- "Alternative fuel" is defined in s. 525.01, F.S., as:
 - Methanol, denatured ethanol, or other alcohols;
 - Mixtures of gasoline or other fuels with methanol, denatured ethanol, or other alcohols;
 - Hydrogen;
 - Coal-derived liquid fuels; and
 - Fuels, other than alcohol, derived from biological materials.
- "Aviation fuel" is defined in s. 206.9815, F.S., as fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications.
- "Diesel fuel" is defined in s. 206.86, F.S., as all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle.
- "Gas" is defined in s. 206.9925, F.S., as all natural gas, including casing head gas, and all other hydrocarbons not defined as oil in subsection (2).
- "Oil" is defined in s. 206.9925, F.S., as crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.
- "Motor fuel" is defined in s. 206.01, F.S., as all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle.
- "Natural gas fuel" is defined in s. 206.9951, F.S., as any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23), F.S. This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.
- "Petroleum fuel" is defined in s. 525.01, F.S., as all gasoline, kerosene (except when used as aviation turbine fuel), diesel fuel, benzene, other like products of petroleum under whatever name designated, or an alternative fuel used for illuminating, heating, cooking, or power purposes, sold, offered, or exposed for sale in this state.

¹⁴ *Id.*

¹⁵ Jamal Thalji, "Port of Tampa will fuel region with new \$56 million petroleum terminal," Tampa Bay Times, Oct. 30, 2013, available at <http://marketplace.tampabay.com/news/business/energy/port-of-tampa-unveils-new-55-million-petroleum-terminal/2149912> (accessed March 4, 2014).

¹⁶ At <http://www.porteverglades.net/cargo/petroleum/> (accessed 3/25/2014).

¹⁷ At <http://www.porteverglades.net/cargo/petroleum/from-tanker-to-gas-tank/> (accessed 3/25/2014).

- “Petroleum product” is defined in s. 206.9925, F.S., as any refined liquid commodity made wholly or partially from oil or gas, or blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, or blends or mixtures of two or more liquid products or byproducts derived from oil or gas, and includes, but is not limited to, motor gasoline, gasohol, aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, motor oil and other lubricants, naphtha of less than 400°F for petroleum feed, special naphthas, road oil, still gas, unfinished oils, motor gas blending components, including petroleum-derived ethanol when used for such purpose, and aviation gas blending components.

“Fuel terminal” is defined as “a storage and distribution facility for fuel, supplied by pipeline or marine vessel,” with the capacity to receive and store bulk transfers of fuel, is equipped with a loading rack for the physical transfer of fuel into tanker trucks or rail cars, and is registered as a terminal with the Internal Revenue Service.

Limitation on Changes to Local Land Use Designations

Beginning on July 1, 2014, a local government may not amend its comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with a fuel terminal's classification as a permitted and allowable use under this section, including, but not limited to, an amendment that causes a fuel terminal to be a nonconforming use, structure, or development. In the event of damage to or destruction of a fuel terminal as a result of a natural disaster or other catastrophe, a local government shall allow the timely repair of a fuel terminal to the capacity of the fuel terminal as it existed before the disaster.

This section does not limit the authority of a local government to adopt, implement, modify, and enforce applicable federal and state requirements for fuel terminals, including safety and building standards, and local safety and building standards. However, the exercise of such authority may not conflict with federal or state safety and security requirements for fuel terminals.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Restricting changes in local land use designations pertaining to existing permitted and authorized fuel terminals to those which do not conflict with such use provides greater stability and certainty for the fuel terminal industry, meeting in part the legislative intent stated in section 1 of the bill.

D. FISCAL COMMENTS:

None.